



# ALTERNATIVE AMICABLE METHODS FOR RESOLVING E-COMMERCE DISPUTES -DIRECT NEGOTIATIONS AND ELECTRONIC MEDIATION-

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**Abstract:** *The rapid development in technology has led to the emergence of e-commerce as one of the most prominent forms of modern commercial exchange, resulting in a new type of dispute with a special nature that requires flexible and rapid legal tools. Due to the shortcomings of traditional judicial mechanisms in keeping pace with the characteristics of this digital environment, alternative dispute resolution (ADR) methods have emerged as an effective option for addressing disputes arising from it. These methods, through various approaches, represent a promising framework for achieving justice efficiently in light of the cross-border challenges imposed by e-commerce.*

**Keywords:** *E-commerce, Legal Avenues, Alternative Methods, Commercial Disputes.*

## INTRODUCTION:

In recent decades, the world has witnessed a radical transformation in trade patterns due to rapid technological developments, which have contributed to the emergence of e-commerce as one of the most prominent features of the contemporary digital economy. Commercial transactions are now concluded and executed via electronic media, overcoming geographical and temporal barriers and achieving a high degree of flexibility and speed in commercial exchanges. However, this transformation has not been without new legal challenges, in particular those related to the resolution of disputes arising from these transactions, especially in view of the virtual environment of the parties, the multiplicity of jurisdictions and the diversity and overlap of applicable laws. This has highlighted the urgent need to develop alternative mechanisms for resolving these disputes that are more flexible, less costly, faster and more suited to the digital nature and its specific requirements. As a result, alternative dispute resolution methods in e-commerce have emerged as effective mechanisms for resolving emerging disputes, which have met with increasing acceptance and demand because they achieve the desired goals quickly and in a civilised and amicable manner. Accordingly, we will try to explore this topic by posing a fundamental problem: what are these alternative legal mechanisms that are used to resolve disputes in e-commerce?

In order to answer this question, we have decided to examine some of these mechanisms by dividing the topic into two sections:

Section 1: Direct negotiations.

Section 2: Electronic mediation.

## SECTION 1: DIRECT NEGOTIATIONS

Negotiations are classified<sup>1</sup> among the amicable methods resorted to for settling disputes arising from e-commerce contracts. Its concept lies in being one of the friendly methods used to resolve disputes resulting from economic cooperation agreements in general and international trade in particular. It is considered one of the best means to resolve disputes through which the parties directly seek to solve the problem at hand, with the possibility of success or failure depending on the will of the parties<sup>2</sup>. It has achieved widespread success

<sup>1</sup>- Also called consultation or reconciliation.

<sup>2</sup>- Khaled Mamdouh Ibrahim, *Electronic Arbitration in Electronic Commerce Contracts*, Dar Al-Fikr wa Al-Qanun, Egypt, 2010, p. 221.



and great demand from disputants due to its perceived effectiveness in resolving their disputes while maintaining friendly working relationships at the same time.

### **Subsection 1: Characteristics and Conditions of Negotiations**

Direct negotiations are characterised by a number of advantages that distinguish them from other amicable means. A number of conditions must also be met for them to be legally valid. These characteristics and conditions are explained below:

#### **Sub-branch 1: Characteristics of negotiations**

The idea of negotiation is characterised by the fact that it is bilateral, i.e. that it takes place only between the two parties to the dispute, without the intervention of a foreign third party, and that it is conducted over the telephone or through a page belonging to an online e-dispute resolution site<sup>1</sup>.

The amicable and direct resolution of the dispute allows the parties to express their views spontaneously and freely, and the interest in the continuation of commercial relations between the two parties is given priority<sup>2</sup>.

Low cost, as there are no court or arbitrator fees compared to other amicable means.

Focus on interests, not legal positions, as negotiations focus on what each party really needs, not just who is legally right.

#### **Sub-branch 2: Conditions for negotiations**

For negotiations to be valid, several conditions must be met, which are:

##### **1. Good faith:**

The principle of good faith is one of the essential pillars that must be present in negotiations. It is inconceivable that a fair solution can be reached if the intention to procrastinate and delay outweighs the intention of one of the parties; on the contrary, this would complicate matters.

##### **2. Equality of power centres:**

There must be a balanced and equitable environment in which to conduct negotiations. Conditions cannot be imposed on one party without the other, as this will upset the balance of power between the parties.

##### **3. Transparency and accuracy of information:**

Successful negotiations depend on the exchange of accurate and transparent information, such as purchase records, electronic contracts, delivery data, etc. It is impossible to build sound and solid negotiations in the context of concealing or misrepresenting information.

##### **4. Presence of negotiation skills:**

Successful negotiations require the presence of qualified people in the field who have the ability to communicate effectively, make appropriate concessions at the right time, and analyse the other party's positions to know their intent and purpose.

##### **5. Document the results:**

Despite the informal nature of negotiations, documenting the results in a written agreement is a necessity to protect the parties legally and to enable them to easily implement the negotiated agreement later<sup>3</sup>.

### **Subsection 2: Procedures for Conducting Negotiations**

The negotiation process takes place through following specific procedures and steps, which are:

<sup>1</sup>- Khaled Mamdouh Ibrahim, *Electronic Arbitration in Electronic Commerce Contracts*, Dar Al-Fikr Al- university, Egypt, 2008, p. 216.

<sup>2</sup>- Same Reference, p. 217.

<sup>3</sup>- Jie Zheng, *Online Resolution of E-Commerce Disputes: Perspectives from the European Union, the UK, and China*, Springer Cham, 2020, p. 102.



### **Sub-branch 1: The Process of Submitting a Request**

The negotiation process begins by sending a request to the center submitted by both parties to the commercial dispute, in which they declare their desire to resolve the existing dispute between them through direct negotiations. The request submitted to the center includes information pertaining to both parties (names of the parties, their addresses, telephone numbers, email addresses), with the request attached with a summary of the subject matter of the case and the reasons for the dispute.

After the center receives the request, if it is from one party, the center reviews the request and studies it in order to send a notification to the other party informing them of the first party's desire to negotiate with them directly about the subject of the existing dispute, giving them a deadline to express their response by accepting or rejecting the negotiations. If their choice is to reject the request or the deadline expires without responding to the notification, this is considered an implicit rejection and the process ends. However, if the request is accepted, the negotiation sessions begin<sup>1</sup>.

### **Stage 2: Conduct of negotiations**

In the second stage, as soon as the centre receives a response accepting the start of negotiations, or a request for negotiations in the case of a bilateral request, it sends a notification to the parties containing information specific to the page prepared for negotiations on the website of the electronic negotiation centres, together with the password specific to each party, which allows them to access the page. This is characterised by complete confidentiality by providing secure channels through which communication takes place, taking into account that the period granted to them for communication and negotiation through the page prepared for communication is limited to 30 days<sup>2</sup>.

### **Sub-branch 3: Termination of Negotiations**

Through the course of the sessions, the two parties try to bridge their viewpoints and reach a suitable settlement of the existing dispute and resolve it amicably through civilized dialogue and exchange of documents and records. If they reach a satisfactory solution, the sessions end positively. However, if a solution is not reached, the negotiation sessions end negatively. It is possible for the center organizing and monitoring the negotiation sessions to suggest electronic mediation to the two parties as another alternative solution<sup>3</sup>.

## **SECTION 2: ELECTRONIC MEDIATION**

Electronic mediation, according to its concept, is intended to be a means of resolving disputes in e-commerce contracts in particular and electronic contracts in general through the use of technological means, foremost of which is the Internet<sup>4</sup>. The disputing parties seek the assistance of a mediator who does not make a decision to resolve the dispute, but helps them find a solution acceptable to each of them in a neutral manner. It is also defined according to the UNCITRAL law as: "A process through which the dispute is resolved amicably, whether by mediation or conciliation, with the mediator attempting to reach an amicable solution to the contractual or legal dispute without having the authority to compel the disputants to accept the solution." It is clear to us from the concept of mediation that it is an amicable procedure to which the parties to the dispute resort to resolve disputes arising between them in the field of e-commerce.

### **Subsection 1: Advantages and Conditions of Electronic Mediation**

Since electronic mediation is one of the most prominent forms of resolving digital commercial disputes, this gives it an advantage through its features. This also requires it to include a set of conditions in order to be legally valid, and this is what we will detail below:

<sup>1</sup>- Thomas D. Cavenagh, Lucille M. Ponte, *Cyberjustice - Online Dispute Resolution (ODR) for E-Commerce*, Kahle / Austin Foundation, 202, p. 101.

<sup>2</sup>- Same Reference, p. 103.

<sup>3</sup>- Suzan de Janasz; Beverly. DeMarr, *Negotiation and Dispute Resolution*, Sage Publications, 2018, p. 113.

<sup>4</sup>- Abd Al-Sabour Abd Al-Qawi Ali Misri, *The Legal Organization of Electronic Arbitration*, Law and Economics Library, Saudi Arabia, 2013, p. 69.



### **Sub-branch 1: Advantages of Electronic Mediation**

Electronic mediation is characterized by a set of advantages, which are:

Effectiveness of the tools used and the modern technologies followed from the moment of referral until its resolution in the mediation process, and ensuring the recording of all that takes place between the disputants in discussions through a program running on the Internet, starting from the initial contact stage between the two parties to the dispute until the final agreement between them<sup>1</sup>.

Confidentiality in procedures: The mediator in charge of the dispute is prohibited from disclosing the information he obtains in the mediation sessions to other persons except with the consent of the disputants, and his violation of this commitment entails his liability. This confidentiality is one of the most important basic pillars of alternative means, as the leakage of the existence of a dispute and its causes would prejudice the positions of the disputants and their status in the commercial market<sup>2</sup>.

Simplicity of its procedures and clarity of its rules: It can be used to settle disputes, in addition to its flexibility and lack of restriction to a specific form, which leads to the speed of resolving the dispute and alleviates the burden on the judiciary and avoids the quarrels that may occur in the event of a confrontation between the parties, as it does not depend on their physical presence<sup>3</sup>.

### **Sub-branch 2: Conditions of Electronic Mediation**

The conditions that the majority of legislations, bodies, and international centers specialized in dispute resolution have emphasized are all related to the mediator in charge of the settlement, and these conditions are embodied in the following points:

#### **First: The Mediator's Expertise in the Dispute**

The mediator must possess the wisdom, experience, and necessary competence in the subject matter of the dispute presented to them. This condition is essential in appointing the mediator, as the latter must be fully specialized, qualified, and well-trained, enabling them to lead the mediation process competently<sup>4</sup>.

#### **Second: The Mediator's Commitment to Neutrality**

The principle of neutrality is a fundamental principle that must be available in the mediator. They must remain neutral and not be biased towards any party, nor influence the decision of any party to the dispute, in order to enhance the parties' confidence in the mediation on the one hand and in order to reach a fair settlement satisfactory to both parties together<sup>5</sup>.

#### **Third: Candor**

The mediator must be characterized by the highest degree of transparency and caution due to the specificity of digital transactions, as mediation involves dealing with sensitive data and information. The mediator must commit to candor in providing information and providing it completely, accurately, and with all honesty and

<sup>1</sup>- Mohammad Ibrahim Abu Al-Haija, *Electronic Arbitration, Electronic Means of Dispute Resolution - Mediation, Conciliation, Direct Negotiations* -, Dar Al-Thaqafa for Publishing and Distribution, 2nd ed., 2010, pp. 28-29.

<sup>2</sup>- Arroui Abdelkarim, *Alternative Methods in Resolving Judicial Disputes - Reconciliation and Judicial Mediation According to the Code of Civil and Administrative Procedures* -, Master's Thesis, Contracts and Liability Branch, University of Algiers 1, 2012, p. 29.

<sup>3</sup>- Qasaa Souad, "Electronic Mediation as an Alternative Means of Resolving Electronic Commerce Disputes," *Journal of Economic Sharia, University of Amir Abdelkader, Constantine, Volume 09, Issue 08, Second Edition 2020*, p. 22.

<sup>4</sup>- Azwar Muhammad, Messaoudi Youssef, "Electronic Mediation as a Mechanism for Settling Consumer Disputes Concluded by Electronic Means," *African Journal of Legal and Political Studies, University of Ahmed Deraria, Adrar, Volume 02, Issue 02, 2018*, p. 146.

<sup>5</sup>- Khaled Mamdouh Ibrahim, *Electronic Arbitration in Electronic Commerce Contracts*, Previous Reference, p. 222.



transparency, and not disclose any information to the other party so that the interests of the first party are not affected<sup>1</sup>.

#### **Fourth: The Mediator's Commitment to Professional Secrecy**

The mediator is obligated to maintain the confidentiality and privacy of the data they deal with during the mediation process, and this includes any type of personal, sensitive, or commercial information that has been disclosed or that has been reached during the mediation. Maintaining professional secrecy is one of the essential aspects of mediation, as it aims to enhance trust between the disputing parties and maintain security and credibility in the process, including maintaining personal data and legal details related to the subject of the dispute<sup>2</sup>.

#### **Subsection 2: Procedures for Conducting Electronic Mediation**

The electronic mediation process takes place according to a set of procedures that are carried out electronically on the website of the center, starting from filling out an electronic form to request settlement, passing through procedures that are discharged in electronic forms, and ending with the issuance of the ruling that is recorded on the website of the case. These procedures, according to their sequence, are represented in:

##### **Subsection 1: Submission of the request to the mediation centre**

Anyone wishing to settle a dispute by means of electronic mediation must fill in the mediation request form prepared in advance by the Centre and published on the Centre's website, which must include the names and addresses of the parties to the dispute, a copy of the agreement to use mediation if both parties to the dispute agree to do so, and a summary statement of the subject matter and nature of the dispute. Once the Centre has received the request, it sends an acknowledgement of receipt to the applicant, and then contacts the other party to inform it of the first party's wish to proceed to mediation<sup>3</sup>. If the second party agrees, the Centre will start the process; if it refuses, the mediation will end immediately and the first party will be informed of the second party's decision. The time limit for the second party to respond to the mediation request is 30 days from the date the invitation is sent to the second party, unless a shorter or longer time limit is specified in the invitation, which may vary from centre to centre. However, if the request for mediation is sent jointly by both parties, the Centre will only send an acknowledgement of receipt of the request for mediation and set a date for the mediation to begin<sup>4</sup>.

##### **Subsection 2: Mediation fees**

Electronic mediation is not free of charge, but is subject to a financial charge which includes certain fees and costs, namely:

**Registration fees:** These are the fees that the Centre collects from the applicant for the procedure or settlement when the request is registered with the Centre.

**Administrative costs:** These are amounts determined according to the nature of the dispute and cover the costs of correspondence, notifications and administrative costs necessary to resolve the dispute.

**Fees:** These are the amounts determined for the mediator in the mediation process.

#### **Sub-branch 3: Commencement of Mediation**

<sup>1</sup>- Khalifi Samir, "Electronic Mediation, the Alternative Solution to Disputes in Electronic Commerce Contracts," Arab Journal of Research, Studies, and Human and Social Sciences. Volume 13, Issue 04, 2021, p. 327.

<sup>2</sup>- Dharifi Nadia, Magran Samah, "Electronic Mediation as a Mechanism for Settling Electronic Commerce Disputes," Majallat Maalim for Legal and Political Studies. Vol. 04, Issue 02, 2020, p. 343.

<sup>3</sup> - Souad Qasaa, "Electronic Mediation as an Alternative Means of Resolving Electronic Commerce Disputes," Previous Reference, p. 23.

<sup>4</sup>- For example, the squar trade center set the deadline at 14 days.



The center provides the disputing parties with a list of mediators' names and qualifications, and as soon as the disputing parties agree on the mediator and the procedures, they move to the second stage, in which the subject is discussed and the essential points of disagreement are extracted<sup>1</sup>. This is done after sending an email containing a password from the mediator to both disputing parties, through which they can enter the dispute page prepared on the center's website, so that they can attend mediation sessions to discuss their requests and consult with them on the subject of the dispute in order to reach a compromise acceptable to both parties<sup>2</sup>. Then the sessions are held and the mediator prepares the final settlement agreement and is obligated to present it to the disputing parties until it is signed.

#### **Sub-branch 4: Termination of the Mediation Process**

Mediation ends in one of these two cases:

##### **-Case 1: The mediator reaches an amicable settlement of the dispute between the litigants.**

If the mediator reaches a sound settlement of the dispute and the settlement agreement is ratified by the disputing parties, the process ends at the moment of ratification of the settlement agreement, so that this agreement, after its ratification, is considered binding and legally enforceable and as a final judgment that is not subject to any method of appeal<sup>3</sup>.

##### **Case 2: The mediator fails to reach a settlement of the dispute.**

Upon the termination of mediation, whether with a positive or negative result, the mediator immediately sends a written notification to the center informing it of the termination of mediation, while maintaining all information or data received during the course of mediation in complete confidentiality, and must also return all documents and records to their owners. This is what is stipulated in Article 19 of the Mediation Rules of the World Intellectual Property Organization (WIPO).

#### **CONCLUSION:**

With the tremendous development that the world is witnessing in the technological and information fields, electronic commerce has become an undeniable reality and a fundamental source of the global economy. However, this rapid digital transformation has not been without its legal problems and complex disputes, which pose unprecedented challenges to traditional legal systems in terms of efficiency, jurisdiction and speed of dispute resolution. As a result, alternative dispute resolution methods have emerged as effective solutions that are in line with the nature of the digital environment and respond to the parties' need for flexible and effective mechanisms to protect their rights without complication. As the article has shown, direct negotiation and electronic mediation can be considered among the most important of these mechanisms used to resolve disputes, and they have become widely popular because of their advantages and their success in achieving rapid amicable settlements.

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<sup>1</sup>- Souad Qasaa, The Previous Reference, p. 24.

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<sup>3</sup>- Dharif Nadia, Previous Reference, p. 349.



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